

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2009-032680

08/02/2011

HONORABLE EMMET RONAN

CLERK OF THE COURT  
K. Depue  
Deputy

PATRICIA MCKENNA, et al.

ROGER W RIVIERE

v.

C RALSTON, et al.

GARVEY M BIGGERS

STEVEN A COHEN

TRIAL SET  
TRIAL MANAGEMENT CONFERENCE SET

9:25 a.m. This is the time set for Telephonic Status Conference. Counsel, Roger Riviere, is present on behalf of Plaintiff, Patricia McKenna. Counsel, Steve Cohen, is present on behalf of Plaintiff, Edwin Ferstadt. Counsel, Denise Troy, is present on behalf of Defendant, C. Ralston, et al.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

Discussion is held.

Counsel advises the Court that they participated in mediation. The matter has been resolved as to Plaintiff Patricia McKenna, but not as to Plaintiff Edwin Ferstadt. Therefore,

**IT IS ORDERED** as follows:

1. **TRIAL**

This matter is set for a **Jury Trial** on **February 28, 2012 at 9:30 a.m.** in this division.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2009-032680

08/02/2011

LENGTH OF TRIAL: 4 days

HONORABLE EMMET J. RONAN  
SOUTHEAST ADULT FACILITY  
222 EAST JAVELINA  
COURTROOM 205  
MESA AZ 85210  
602-506-0438

**THIS IS A FIRM TRIAL SETTING**

Trial days and hours are as follows: Tuesday through Friday from 9:30 a.m. to 4:30 p.m. daily. The Court will take two 15-minute recesses, one in the morning and one in the afternoon. The lunch recess will be from 12:00 p.m. to 1:30 p.m.

2. **EXHIBITS AND JURY SELECTION**

A. MARKING EXHIBITS FOR TRIAL

Except illustrative exhibits made during trial, all exhibits are to be exchanged no later than **January 13, 2012**.

Trial counsel are directed to personally meet **no later than January 27, 2012** to discuss the exhibits prior to marking them for trial. Counsel shall attempt to agree on authenticity, foundation and admission of the exhibits to shorten the time spent on exhibits during the trial.

**At least one calendar day prior to the Trial Management Conference, each side shall have numbered its exhibits and provided a coordinating list of the exhibits to each attorney, the Court and the Courtroom Clerk so that the Court can hear and rule on all objections at the Trial Management Conference.** Written stipulations to admit specified exhibits into evidence are encouraged.

Counsel shall present all exhibits with a written list of brief exhibit descriptions to the Courtroom Clerk **no later than February 14, 2012**. The exhibits will be marked in **consecutive** order -- Plaintiff's will be marked first, Defendant's will be marked second. Placeholders are not used and numbers will not be reserved for exhibits not presented at the date and time specified. Counsel will make sure that they do not bring to the Clerk a Plaintiff's set of exhibits and a Defendant's set of exhibits that include duplicate exhibits. **Counsel should note that depositions are not marked as exhibits.** Counsel shall present original depositions for filing at

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2009-032680

08/02/2011

the same time that exhibits are presented. With regard to trial exhibits, counsel are strongly discouraged from marking exhibits they do not anticipate using during trial.

**Failure to follow the procedure for submitting trial exhibits may result in the preclusion of that parties' exhibits.**

C. DEPOSITIONS

To the extent reasonably possible, depositions should be summarized.

Narrative summaries with brief excerpts of deposition question and answer testimony are preferred at trial rather than the reading of many pages of testimony.

Videotape depositions shall be edited.

D. JURY SELECTION

The Court uses the "struck" method for jury selection.

Counsel will be permitted to conduct their own *voir dire* after the Court's examination.

3. **TRIAL MANAGEMENT CONFERENCE**

A **Trial Management Conference** is set for **February 13, 2012 at 10:30 a.m.** in this division.

At the Trial Management Conference counsel shall be prepared to discuss:

- A. Motions In Limine
- B. Proposed length of counsels' *voir dire*, opening statements, examination of witnesses and closing arguments.
- C. Stipulations for the foundation and authenticity of exhibits.
- D. Jury Instructions (preliminary and final), mini-opening statements and *voir dire*.
- E. Agreed-upon deposition summaries and excerpts from deposition transcripts and the editing of videotaped depositions.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2009-032680

08/02/2011

F. Any special scheduling or equipment issues.

**Counsel who will be the trial lawyer on the case are required to attend the trial management conference.**

Failure of trial counsel to attend the trial management conference may result in sanctions.

4. **FINAL JOINT PRETRIAL STATEMENT**

The Final Joint Pretrial Statement in accordance with Rule 16(d), A.R.Civ.P., is due in this division by **5:00 p.m. on February 6, 2012.**

In addition to the information required by A.R.Civ.P. Rule 16(d), counsel are to identify in the Joint Pretrial Statement all depositions or other transcribed testimony that may be offered at trial. The proposed testimony is to be identified by reference to page and line numbers. Objections, if any, to such testimony and the reason for such objections are also to be set forth therein.

Counsel shall file and deliver to the Court at the same time as the Joint Pretrial Statement the following:

A: Proposed voir dire questions.

B. Joint set of agreed-upon preliminary, standard and final jury instructions.

C. Separate sets of requested instructions that have not been agreed upon on a diskette in Word format. Please read *Rosen v. Knaub*, 175 Ariz. 329, 857 P.2d 381 (1993), and the RAJI Civil 3d Statement of Purpose and Approach before preparing the request for non-RAJI instructions.

Counsel are instructed to set forth with specificity objections to opposing counsel's jury instructions and cite specific authority to that matter.

D. Jury Trial Cases: The parties shall jointly prepare a **brief one to two-paragraph summary** of the case which the Court will read to the jury at the commencement of voir dire. The statement shall briefly set forth the facts of the case and it should specify the claims and the defenses.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2009-032680

08/02/2011

E. Any trial memoranda (optional) which the parties wish to submit should accompany the Final Joint Pretrial Statement.

F. If there are any issues regarding expert opinions, those issues shall be raised in motions *in limine* or Rule 56 motions and shall be addressed at the Trial Management Conference.

5. **MOTIONS IN LIMINE**

Any and all motions *in limine* shall be filed no later than **January 13, 2012 (30 days prior to the TMC)**. Such motions must meet the test of *State v. Superior Court*, 108 Ariz. 396, 397, 499 P.2d 152 (1972): “The primary purpose of a motion *in limine* is to avoid disclosing to the jury prejudicial matters which may compel a mistrial.” See also, Ariz. Rules of Evidence, Rule 103(c). Written responses to motions *in limine* shall be filed and hand-delivered to opposing counsel and this Court no later than **January 27, 2012 (15 days prior to TMC)**. Replies shall not be filed. Failure to meet and confer in accordance with Rule 7.2(a), Ariz.R.Civ.P., will result in sanctions.

Any motion *in limine* not timely filed will be deemed waived.

6. **WITNESS AND EXHIBIT LISTS**

The witness and exhibit lists shall contain no surprises. Any information sought by other discovery devices and revealed for the first time on the witness or exhibit lists will be inadmissible at trial.

**KEY DATES TO CALENDAR**

• TRIAL DATE-----	
• TRIAL MANAGEMENT CONFERENCE-----	
• JOINT PRETRIAL STATEMENT DELIVERED----- (with attachments) <ul style="list-style-type: none"><li>• <i>Voir Dire</i> inquiry;</li><li>• Preliminary, Standard, and Final Jury Instructions;</li><li>• Deposition designations</li></ul>	
• MOTIONS IN LIMINE DELIVERED-----	
• SUBSTANTIVE MOTIONS DELIVERED----- <ul style="list-style-type: none"><li>• Including Rule 56 Motions</li></ul>	
• DELIVER TRIAL EXHIBITS-----	

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2009-032680

08/02/2011

Exhibit Procedures

- Depositions are not exhibits and will not be marked as such. Originals are to be delivered to the Clerk prior to trial. Counsel are to use their copies of the depositions as the Court retains the originals for reference.
- A list with a generic description of each exhibit should be provided. The list should contain the case number, caption, scheduled trial date and the party submitting the exhibits.
- Counsel shall provide a list of all exhibits that have been stipulated into evidence.
- Exhibits will be marked numerically and consecutively.
  - Plaintiff(s) exhibits will be marked first followed by Defendant(s).
  - Numbers will **not** be skipped or “**saved**” in anticipation of additional exhibits to be submitted.
  - Subsections of exhibits will be marked as the next available number. Do NOT use subsections of exhibits (ex. 4a or 4.1). Please use the next consecutive number.
- Each exhibit will be clipped or bound if too large to be stapled.
- Exhibits are to be separated by a colored sheet of paper or by a divider sheet.
- Blow-ups and large items may be used for demonstrative purposes; however, if they are to be marked as an exhibit, a photograph of 8 ½ x 11 size are preferred for marking as an exhibit. Please see the Clerk if there are issues with this.
- Duplicate exhibits will **NOT** be marked.  
**PLEASE CONFER REGARDING EXHIBITS TO INSURE THERE ARE NO DUPLICATES.**
- **ALL EXHIBITS ARE DUE AS LISTED ABOVE – AT THE TIME OF THE TRIAL MANAGEMENT CONFERENCE OR AS ADVISED BY THE COURT**

**NOTE: ALL COURT PROCEEDINGS ARE RECORDED BY AUDIO METHOD AND NOT BY A COURT REPORTER. ANY PARTY MAY REQUEST THE**

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2009-032680

08/02/2011

**PRESENCE OF A COURT REPORTER BY CONTACTING THIS DIVISION THREE  
(3) COURT BUSINESS DAYS BEFORE THE SCHEDULED HEARING.**

9:33 a.m. Matter concludes.

ALERT: eFiling through AZTurboCourt.gov is mandatory in civil cases for attorney-filed documents effective May 1, 2011. See Arizona Supreme Court Administrative Orders 2010-117 and 2011-010. The Court may impose sanctions against counsel to ensure compliance with this requirement after May 1, 2011.